

IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION  
LITTLE MISSOURI RIVER BASIN ABOVE LITTLE BEAVER CREEK (39F)  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANTS: Roger Arpan Irrevocable Trust; Randell G. Arpan;  
Robert D. Arpan

**CASE 39F-0093-R-2021**  
39F 22111-00  
39F 175695-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

Water Right Claims 39F 22111-00 and 39F 175695-00 appeared in the Preliminary Decree for the Little Missouri River, above Little Beaver Creek (Basin 39F). These claims received issue remarks. Issue remarks result from Department of Natural Resources and Conservation ("DNRC") claims examination or by Water Court order. Claims examination confirms the historical use of water right claims and identifies issues

with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim. These claims did not receive any objections or notices of intent to appear.

The Court consolidated these claims into Water Court Case 39F-0093-R-2021 on August 4, 2021. The consolidation order set a filing deadline by which Claimants were to file information resolving the issue remarks on each claim. Randell Arpan filed a response on August 25, 2021. The Court issued another order setting a filing deadline on January 7, 2022 summarizing the resolution information and requesting feedback. The Court did not receive additional responses.

### **FINDINGS OF FACT**

1. Claim 39F 22111-00 appeared with the following issue remarks:

THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION. THE CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE IN THE SESESW SEC 30, T7S, R59E, CARTER COUNTY.

2. Claim 39F 175695-00 appeared with the following issue remark:

THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION AND RESERVOIR RECORD. THE CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE THE SWNWNE SEC 11 TWP 8S RGE 58E CARTER COUNTY.

3. Both above-captioned claims also appeared with the following issue remark:

POINT OF DIVERSION AND RESERVOIR RECORD WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS

ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

4. Randell Arpan states that the DNRC's modification of Claim 39F 22111-00 resulted in the abstract describing a reservoir owned by the United States of America. Mr. Arpan states that the "1932 reservoir" is on land owned by Randell G. Arpan and Terry L. Arpan. The Court proposed changing the legal land description of the claimed reservoir back to NWSWSE of Section 30, T7S, R59E. The Court did not receive feedback regarding this proposal.

5. The DNRC modified legal land description of the reservoir claimed by Claim 39F 22111-00 appears to be identify a reservoir in Lot 4 of said Section 30, which is owned by the United States of America.

6. The point of diversion and reservoir location of Claim 39F 22111-00 should be described as NWSWSE of Section 30, T7S, R59E.

7. Mr. Arpan states the DNRC's modification to the claimed reservoir location of Claim 39F 175695-00 is accurate.

8. The place of use of Claim 39F 175695-00 should be described as SWNWNE of Section 11, T8S, R58E.

9. The issue remarks should be removed from the above-captioned claims.

#### **APPLICABLE LAW**

1. A properly filed statement of claim is prima facie proof of its content. Section 85-2-227, MCA. The prima facie status of a claim may be overcome by a preponderance of the evidence. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

2. The Water Court must weigh an issue remark, and the information resulting in that issue remark, against the claimed water right. Section 85-2-247(2), MCA.

3. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248, MCA. The Court must review information in the

claim file or obtained by the Court to determine if there is a sufficient basis to resolve the remarks. 85-2-248(3), MCA.

### **CONCLUSIONS OF LAW**

1. The evidence in the record is sufficient to make the modifications described in the Findings of Fact because the evidence overcomes the prima facie status of Claim 39F 175695-00. Also, the changes to Claim 39F 22111-00 result in reverting the legal land descriptions from DRNC modifications to what was originally claimed.

2. The evidence in the record and the above-described changes provide the Court with a sufficient basis to resolve and remove the issue remarks on the above-captioned claims.

### **RECOMMENDATIONS**

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. Post-decree Abstracts of Water Right Claims are served with this Report to confirm the recommended changes have been made in the state's centralized record system.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

#### **Service via USPS Mail:**

Randell G. Arpan  
Roger Arpan Irrevocable Trust  
Robert & Gay Arpan, Trustees  
PO Box 27  
Alzada, MT 59311

Robert D. Arpan  
PO Box 38  
Alzada, MT 59311

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**LITTLE MISSOURI RIVER, ABOVE LITTLE BEAVER CREEK**  
**BASIN 39F**

**Water Right Number:** 39F 22111-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** ARPAN, ROGER IRREVOCABLE TRUST  
ARPAN ROBERT & GAY TRUSTEES  
PO BOX 27  
ALZADA, MT 59311

**Priority Date:** OCTOBER 31, 1932

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** UNNAMED TRIBUTARY OF SOUTH COTTONWOOD CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSWSE	30	7S	59E	CARTER

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DAM

**Reservoir:** ONSTREAM **Reservoir Name:** C. PIERCE NO. 1

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWSWSE	30	7S	59E	CARTER

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 8.00 FEET

**Depth:** 5.00 FEET

**Surface Area:** 4.00 ACRES

**Capacity:** 8.00 ACRE-FEET

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NWSWSE	30	7S	59E	CARTER

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**LITTLE MISSOURI RIVER, ABOVE LITTLE BEAVER CREEK**  
**BASIN 39F**

**Water Right Number:** 39F 175695-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:**

RANDELL G ARPAN

PO BOX 27

ALZADA, MT 59311

ROBERT D ARPAN

PO BOX 38

ALZADA, MT 59311 0038

ARPAN, ROGER IRREVOCABLE TRUST

ARPAN ROBERT & GAY TRUSTEES

PO BOX 27

ALZADA, MT 59311

**Priority Date:** DECEMBER 31, 1945

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** UNNAMED TRIBUTARY OF LONG DRAW

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNWNE	11	8S	58E	CARTER

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DAM

**Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWNWNE	11	8S	58E	CARTER

**Diversion to Reservoir:** DIVERSION # 1

**Period of Use:** APRIL 1 TO DECEMBER 1

**\*Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWNWNE	11	8S	58E	CARTER